

R430-50-5. RULE VIOLATIONS AND PENALTIES.

This section gives information about rule violations and penalties for noncompliance with rules. The first part of this section lists the rules; the last part describes the CCL enforcement process including the use of penalties for rule violations.

Rationale/Explanation

The National Association for the Education of Young Children (NAEYC) supports the position that each state has the responsibility to regulate child care facilities. Penalties should be a part of the state's regulations to give strength to licensing rules. Research shows that states with the most effective regulation have a greater number of higher quality child care programs. NAEYC. (1998). Licensing and Public Regulation of Early Childhood Programs. Washington, DC.

- (1) The department may place a program's child care residential certificate on a conditional status for the following causes:**
 - (a) chronic, ongoing noncompliance with rules;**
 - (b) unpaid fees; or**
 - (c) a serious rule violation that places children's health or safety in immediate jeopardy.**
- (2) The department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.**
- (3) The department may increase monitoring of the program that is on conditional status to verify compliance with rules.**
- (4) The department may deny or revoke a residential certificate if the child care provider:**
 - (a) fails to meet the conditions of a residential certificate on conditional status;**
 - (b) violates the Child Care Licensing Act;**
 - (c) provides false or misleading information to the department;**
 - (d) misrepresents information by intentionally altering a residential certificate or any other document issued by the department;**
 - (e) fails to allow authorized representatives of the department access to the facility to ensure compliance with this rule;**
 - (f) fails to submit or make available to the department any written documentation required to verify compliance with this rule;**

- (g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or
- (h) has committed an illegal act that would exclude a person from having a residential certificate.

- (5) Within ten working days of receipt of a revocation notice, the provider shall submit to the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the revocation.
- (6) The department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect the children's health or safety.
- (7) Upon receipt of an immediate closure notice, the provider shall give the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the immediate closure.
- (8) If there is a severe injury or the death of a child in care, the department may order a child care provider to suspend services and prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.
- (9) If a person is providing care for more than four unrelated children without the appropriate license, the department may:
 - (a) issue a cease and desist order, or
 - (b) allow the person to continue operation if:
 - (i) the person was unaware of the need for a license,
 - (ii) conditions do not create a clear and present danger to the children in care, and
 - (iii) the person agrees to apply for the appropriate license or residential certificate within 30 calendar days of notification by the department.
- (10) If a person providing care without the appropriate license agrees to apply for a license but does not submit an application and all required application documents within 30 days, the department may issue a cease and desist order.
- (11) A violation of any rule is punishable by an administrative civil money penalty of up to \$5,000 a day as provided in Section 26-39- 601.

- (12) The department may assess a civil money penalty and also take action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or residential certificate.
- (13) The department may deny an application or revoke a license or residential certificate for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background checks, civil money penalties, and other fees assessed by the department.
- (14) An applicant or provider may appeal any department decision within 15 working days of being informed in writing of the decision.

CHILD CARE LICENSING ENFORCEMENT PROCESS

Prevention Strategies

CCL takes several preventive steps to encourage compliance with licensing rules before more restrictive actions are needed. CCL offers:

- Technical assistance before licensing
- New provider training
- Verbal technical assistance before, during, and after inspections
- Training on the licensing process and rules for those involved with child care
- A website with up-to-date resources and announcements
- Access to CCL trainers, licensors, management, and support staff
- Support and updates from community partners, such as Care About Childcare
- Information about any licensing changes

Child Care Licensing Inspections

CCL conducts regular inspections of child care programs to determine if providers are in compliance with the state's licensing rules. This is critical in ensuring that regulations are enforced. During these inspections, licensing staff may find instances of rule violations. When a facility is found to be out of compliance, CCL is legally responsible for taking corrective action so that problems are resolved quickly before they become serious. This is usually handled by the provider agreeing to make necessary corrections within a specified amount of time. Some violations may be corrected on-site during the inspection while others may take longer to correct. Serious rule violations that may place the children at immediate risk must be corrected before the licensor leaves the facility. CCL staff will conduct a Follow-up Inspection to verify that any rule violations are corrected, that compliance is maintained, and

to ensure that there are no new, serious rule violations. If more than one Follow-up Inspection is required to ensure compliance with rules, a fee of \$25.00 (as set by the Utah State Legislature) is charged for each additional Follow-up Inspection.

Risk Assessment

Risk assessment is a method of identifying the possibility and severity of harm that may result from a rule violation. Harm is physical, emotional, or psychological injury to a child. Any noncompliance with rule poses a level of risk or harm to children. However, some instances of rule violations present significantly more risk.

The National Association for Regulatory Administration (NARA) advises that licensing agencies maintain research-based assessment methods where risks are prioritized; inspections and technical assistance are focused accordingly; and corrective actions are systematically applied to build consistent compliance. NARA. Recommended Best Practices for Human Care Regulatory Agencies. Lexington, KY. (2009).

CCL's risk assessment has identified the following four levels of risk or harm that may result from a rule violation. Each level is based on actual or potential harm and the severity of the harm.

- Low risk or harm – Harm has not occurred, and is not likely to occur, but the possibility of harm exists.
- Moderate risk or harm – Harm that does not require intervention from a medical or mental health care provider has already occurred, or is likely to occur.
- High risk or harm – Harm that requires intervention from a medical or mental health care provider has already occurred, or is likely to occur.
- Extreme risk or harm – Harm including death or life-threatening injury has already occurred or is likely to occur.

Corrective Actions

CCL's enforcement of licensing rules can be viewed as a progressive set of steps. Utah statute and rules require that when a provider has a serious rule violation, has frequent violations, and/or fails to correct a deficiency, CCL must take corrective action. This is a process of communicating with the provider and taking disciplinary action to ensure the provider comes into compliance with rules.

In determining what action to take, CCL considers several factors:

- Whether actual harm has come to children,
- The risk of harm,
- The scope and severity of each violation, and

- Whether or not it is the first instance of a violation.

CCL uses the following corrective actions to ensure compliance with licensing rules.

Warning

This action warns the provider that a Low Risk rule violation must be corrected within a specified amount of time. The Warning is documented by CCL, but is not placed on the provider's public record.

Citation Warning

This action alerts the provider that a repeat instance of a rule violation will be a Citation. A Citation Warning is documented in CCL's software program (the CCL App), but is not placed on the provider's public record.

Citation and CMP Warning

A Citation is issued for serious or repeat rule violations along with a warning that another instance of the rule violation will result in a civil money penalty (CMP).

A Citation and CMP Warning is not only documented by CCL, but is placed on the provider's public record because of the serious nature of the rule violation.

- A child care provider's public record is available on the CCL website for 36 months.
- All rule violations substantiated in a complaint investigation are public record.
- To check a provider's public record that is older than 36 months, the public may contact CCL.

Repeat Citation and CMP

If a cited rule violation reoccurs, a Repeat Citation is issued and a CMP is imposed. This corrective action is placed on the provider's public record.

Citations and Repeat Citations are each assigned 10 Citation points. CCL uses these points in a system to track a provider's noncompliance with the rules and to alert CCL before a facility reaches a critical noncompliant state. This system is maintained in the CCL App and is not made available to the public.

Plan of Correction

If a provider accumulates 150 Citation tracking points within a 36-month period, CCL will require that the provider follow a Plan of Correction. The Plan will help move the provider toward compliance while allowing them (in most cases) to continue to provide child care and avoid being placed on a conditional residential certificate.

Usually, the provider, licensor, and region manager will discuss and develop the Plan including:

- Rule violations that will need to be corrected,

- Conditions the provider must meet,
- Amount of time that will be allowed for the provider to come in to compliance, and
- Corrective actions that will be taken by CCL if the provider fails to comply with the conditions of the Plan, including placing the provider's residential certificate on Conditional status.

There may not be more than one Plan of Correction in a 36-month period.

Conditional Certificate

A severe rule violation, a violation of any of the conditions described in a Plan of Correction, or failure to meet the deadlines described in the Plan may place a provider's child care certificate on a conditional status. In order for the provider to keep their child care certificate, they must come into compliance within a specified amount of time. CCL staff will conduct monitoring inspections to verify that this occurs.

Depending on the severity of the rule violations and as outlined in the Plan of Correction, the required Monitoring Inspections may be frequent when the provider's certificate is placed on conditional status. The Plan of Correction will state whether weekly, semimonthly, or monthly Monitoring Inspections will be conducted. As set by the Utah State Legislature, an inspection fee of \$245.00 is charged for each Monitoring Inspection. The Plan of Correction will also indicate how long the conditional status will last and what will be required for the provider to regain regular certificate status.

Other Corrective Actions

Recurring and/or severe rule violations can lead to other corrective actions such as an Intent to Revoke, Revocation, and Immediate Closure.

A Warning Letter is used to warn the provider that their certificate will be revoked if the issue(s) described in the Warning Letter letter is not corrected by the specified date.

A Revocation letter is used to inform the provider that their certificate has been revoked. This letter will also state the reason(s) for the revocation. Refer to 50-5(4) for violations that may result in a certificate being revoked.

An Immediate Closure is enforced when the department determines that the children's well-being is at risk and the child care facility must be closed immediately. When this happens, CCL staff will arrive at the facility, notify the parents of each enrolled child of the closure, and remain at the facility until all the children have been picked up by their parents or persons authorized to do so. A Follow-up Inspection will also be conducted to verify that the provider is not in business after having been closed by the department.

The department may also deny a certificate if a provider has been previously closed by CCL.

Corrective Action Grid

The following chart summarizes rule violation risk levels and the corresponding corrective actions. The first column describes the levels of risk (moving down the column) from Low to Extreme risk. The possible corrective actions are listed horizontally across the top of the chart ranging from least to most stringent. A CCL corrective action is based on the degree of risk or harm and the number of instances a rule violation has occurred. For example, the corrective action for the 1st instance of a Low Risk rule violation would be a Warning. If there was a 2nd instance of that same rule violation, the provider would receive a Citation Warning. For the 1st instance of a rule violation with Extreme risk or harm, a Citation and a CMP would be issued with the possibility of other corrective actions being enforced.

CCL RULE VIOLATION CORRECTIVE ACTION GRID						
Corrective Action	Warning	Citation Warning	Citation & CMP Warning	Repeat Citation & CMP	Repeat Citation & CMP & Possible: Plan of Correction, Conditional, Intent to Revoke, or Revocation	Citation & CMP & Possible: Plan of Correction, Conditional, Intent to Revoke, Revocation, Immediate Closure
Risk or Harm	On CCL Record Only		On Public Record			
Low	1st Instance	2nd Instance	3rd Instance	4th Instance	5th Instance	
Moderate	→	1st Instance	2nd Instance	3rd Instance	4th Instance	
High	→		1st Instance	2nd Instance	3rd Instance	
Extreme	→ → →					1st Instance
CMP = Civil Money Penalty						

Rule Violations Corrected During An Inspection

Except for the rule violations listed below, the corrective action for a first-time rule violation that is corrected during the inspection will be reduced by one level. For example, if a rule violation with High risk is corrected during the inspection, instead of a Citation and CMP Warning being issued, the corrective action will be a Citation Warning.

The corrective action will not be reduced for the following rule violations:

- High or Extreme harm to a child
- Inappropriate interactions with children
- Lack of supervision
- An infant sleeping in unsafe equipment
- Inappropriate caregiver-to-child ratio
- No background check for a new covered individual
- An accessible firearm
- Intoxication or impairment of provider or caregiver when a child is in care
- Use of tobacco or similar product, alcohol, or an illegal substance when a child is in care

Civil Money Penalty (CMP)

A Civil Money Penalty (CMP) is a fine charged by the Department for Repeat Citations, or when the first instance of a rule violation results in or is likely to result in Extreme risk or harm.

CMP Amounts for Repeat Citations	
Low Risk Repeat Citation	\$100 per area per rule
Low Risk Supervision or Ratio Repeat Citation	\$100 per child unsupervised or over ratio
Low Risk Background Check Repeat Citation	\$100 per individual out of compliance
Moderate Risk Repeat Citation	\$150 per area per rule
Moderate Risk Supervision or Ratio Repeat Citation	\$150 per child unsupervised or over ratio
Moderate Risk Background Check Repeat Citation	\$150 per individual out of compliance
High Risk Repeat Citation	\$200 per area per rule
High Risk Supervision or Ratio Repeat Citation	\$200 per child unsupervised or over ratio
High Risk Background Check Repeat Citation	\$200 per individual out of compliance

Due to Extreme risk or harm, a Citation and CMP will immediately be issued for the first instance of the following rule violations.

Immediate CMP Amounts for Extreme Risk Rule Violations	
• A child leaves the facility without supervision	\$500 CMP
• A child is left outside of the facility or in a vehicle without supervision	\$500 CMP
• An individual who failed to pass a CCL background check is at the facility	\$500 CMP
• A provider submitted or allowed falsified documents to be submitted to CCL	\$500 CMP
• An accessible firearm (does not apply to a firearm that is unlocked, but inaccessible)	\$500 CMP
• A child suffered serious harm as the result of a rule violation	\$1,200 CMP
• The death of a child was the result of a rule violation	\$5,000 CMP

If a rule violation resulted in a CMP and there is a repeat instance of the rule violation within a 36-month period, the CMP will be double the amount of the original CMP (and all subsequent CMPs will be issued at the doubled amount) not to exceed \$5,000.

A CMP must be paid no later than 30 days from the notification date.

Action Reviews (Appeals)

The term “appeal” is a legal term. To prevent confusion with the legal process, CCL will now refer to appeals as an “Action Review.”

There are three levels of Action Reviews, a provider may choose to start the action review at any level:

- Level 1 is a “Management review.” This will be held with the licensor’s supervisor.
- Level 2 is an “Informal Discussion.” This can be held with the CCL Administrator, the Bureau Director, or Division Director.
- Level 3 is an “Informal Hearing.” This can be held with a representative from the Executive Director’s office or an Administrative Law Judge.

It is a “Formal Appeal” if a provider chooses to use the legal system through an Administrative Law Judge or the courts for dispute resolution. This is handled by the lawyers, not CCL.

Providers are encouraged to ask CCL for clarification about its processes and decisions. Having a clear understanding of CCL’s actions will be most beneficial and can help the provider determine if an action review is necessary.

Providers have 15 working days to request a review of any action taken by CCL. The action review period begins on the date that the provider receives official notification of a CCL action, such as receipt of an Inspection Report.

To request an action review, the provider must submit a written action review request through the provider's Child Care Licensing portal.

Action reviews conducted by the department and CCL staff are considered informal discussions and the department will not charge a fee. CCL will schedule the time to hear the provider's informal action review. This action review session may be conducted by phone, in person at a CCL office, or at the provider's facility depending on the availability of all involved parties.

The department may include any licensors involved in the inspection where rule violations are being reviewed, and any other necessary staff.

The provider may choose the level of authority to begin the action review process, however, the action review process can not move to an appeal officer with a lower authority once a decision has been made.

Action Review Officer Hierarchy	Level of Action Review
CCL Team Manager	Management Review
CCL Administrator	Informal Discussion
Bureau Director	Informal Discussion
Division Director	Informal Discussion
Internal Administrative Law Judge	Informal Hearing
Department Executive Director	Informal Hearing
Administrative Law Judge	Formal Appeal
Courts	Formal Appeal

If a provider retains legal counsel or decides to make a formal appeal with an Administrative Law Judge or through the courts, it will be the responsibility of the provider to pay all costs associated with the action review.

Providers are welcome to present any documentation, witness statements, and other evidence, or to bring witnesses if they consider it necessary to support their action review.

In some cases, the provider may choose to retain legal advice and to have their attorney be present at an action review session. In this case, the provider must notify CCL of their intent to bring their attorney so

the department's attorney may also be present. Otherwise, the action review session will be canceled and rescheduled when all parties, including both attorneys, can be present.

During the action review process, rule violations being reviewed will not show on the provider's public record, and reviewed CMP penalties will not be enforced until the action review is resolved. However, the provider will continue to receive routine inspections, including Follow-up Inspections, for all other rule violations and the provider must maintain compliance with licensing rules while the action review is being resolved.

After the action review process is over, the provider will receive written notification of the action reviews outcome and the facility's file in the CCL App (CCL's software program) will be updated accordingly. The results of the action review process may be that the rule violations are upheld (not removed from the record) or rescinded (removed from the record). Additionally, the corrective action for the rule violation may be changed as part of the action review outcome.

If the provider is not satisfied with the outcome of an action review, they may appeal with a higher departmental authority within 15 working days after receiving the action review outcome notification.